

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

RICHARD L. MILLER,

Plaintiff,

v.

CIVIL ACTION NO. 2:03-2500

DAVID TUCKER, et al.

Defendants.

**ORDER**

Pending before the Court are the Proposed Findings and Recommendation entered by Magistrate Judge Mary E. Stanley on September 29, 2004 [docket no. 90]. In the Proposed Findings and Recommendation, the Magistrate Judge recommended that the Court deny Plaintiff's request for default judgment against Ricky Edward Jordan because Plaintiff is unable to show a sum certain amount of damages. On the same day Plaintiff filed his request for default judgment, he also filed a Proposed Amended Complaint. The Magistrate Judge granted Plaintiff leave to amend his Complaint on September 29, 2004 [docket no. 91]. On October 18, 2004, Plaintiff requested a trial on the default judgment against Mr. Jordan [docket no. 96]. On November 4, 2004, Plaintiff filed a motion for summary judgment against Mr. Jordan [docket no. 114]. On June 9, 2005, the Magistrate Judge issued Proposed Findings and Recommendation that Plaintiff's motion for summary judgment be denied without prejudice as being premature and stated that the Court would schedule a hearing on Plaintiff's motion for default judgment at a future time [docket no. 155]. On June 24, 2005, Plaintiff filed a motion to strike his motion for summary judgment [docket no. 162]. As Plaintiff has not "objected" to either of the Proposed Findings and Recommendation entered on

September 29, 2004, or June 9, 2005, the Court **ACCEPTS AND INCORPORATES** herein those Orders, and **DENIES without prejudice** Plaintiff's motion for default judgment and summary judgment against Mr. Jordan. Therefore, the Court also **DENIES as moot** Plaintiff's request to strike his motion for summary judgment.

The Court **DIRECTS** the Clerk to send a copy of this [Order/written Opinion and Order] to counsel of record and any unrepresented parties.

ENTER: June 30, 2005

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE